IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 472 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHAILALBHAI KALIDAS TAMBOLI

Versus

KAMLA WD/O SURENDRA MOHAN DHAVAN

Appearance:

MR SK BUKHARI for Petitioner

MR VIPUL S MODI for Respondent No. 1

Respondent No. 5 deleted.

MR SUNIL B PARIKH for Respondent No. 6

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 13/12/96

ORAL JUDGEMENT

Leave to delete Opponent No. 5.

By way of this revision application, the petitioner has challenged validity of an order dated 26th February, 1996 passed below Exh. 10 in Execution Petition No. 336 of 1991 by Motor Accident Claims

Tribunal, Vadodara.

In a motor accident Shri Surendra Mohan Dhavan expired and, therefore, Opponents No. 1 to 5 had filed Motor Accident Claim Application No. 391 of 1986 before the Motor Accident Claims Tribunal (Main), Vadodara (hereinafter referred to as "the Tribunal"). In the said application, it was submitted that the present petitioner was owner of the tractor and Opponent No. 5 who has been deleted was driver of the tractor. It was submitted in that claim application that on account of negligent driving of the said driver, an accident had taken place and as a result of the accident, Shri Surendra Mohan Dhavan had expired. As the petitioner was joined in the application as an owner of the vehicle involved in the accident, notice was issued to him but for the reasons best known to him, he did not appear before the Tribunal and ultimately an award was passed against the petitioner also. It is pertinent to note that in the complaint which was filed before the police authorities, the driver had stated that he was driving a tractor belonging to the petitioner and even in the claim application it was alleged that the petitioner was owner of the tractor. The above referred facts were never controverted by any one before the Tribunal.

After the award was passed, as the petitioner did not make payment in terms of the award, execution proceedings had been initiated by present Opponents No. 1 to 4. In the Execution Petition No. 336/91 initiated by Opponents No. 1 to 4, an application below Exh. 10 was filed praying that properties of the present petitioner be attached. The said application was ultimately allowed by the impugned order dated 26th February, 1996.

Being aggrieved by the above referred impugned order, the petitioner has approached this Court. Learned advocate Mr Bukhari appearing for the petitioner has submitted that the award passed by the Tribunal is without jurisdiction and, therefore, it is a nullity. In the circumstance, order with regard to attachment of immoveable properties of the petitioner ought not to have been passed.

In support of his above referred submission, he has submitted that as per provisions of Section 168 of the Motor Vehicles Act, 1988, an award can be passed only against the insurer or owner or driver. Mr Bukhari has submitted that the petitioner is neither an owner nor a driver of the vehicle in question and, therefore, the

Tribunal could not have saddled the petitioner with a liability to make payment of compensation.

Mr Bukhari has submitted that the insurance policy was on record and in the insurance policy name of the petitioner was not shown as an owner. In the circumstances, the Tribunal ought not to have considered the petitioner as an owner. He has further submitted that as the petitioner is not an owner, the Tribunal had no jurisdiction to pass any order against him. He has relied upon a judgment delivered in case of Urban Improvement Trust Vs. Gokul Narain and reported at page 1819 of AIR 1996 SC to show that if a decree is a nullity, it can be challenged at any stage including at the stage of execution proceedings.

He has also relied upon a judgment delivered in case of Dinbai Vs. Dominion of India and reported at page 72 of AIR 1951 Bombay which lays down law to the effect that Section 14 of the Limitation Act does not apply when the order which is sought to be challenged is a nullity.

In the above referred circumstances, he has submitted that as the award declared by the Tribunal is a nullity, properties of the petitioner could not have been attached by the impugned order.

On the other hand, learned advocate Mr Vipul Modi has supported the reasonings given by the Executing Court. He has submitted that it is not open to the executing Court to examine legality or validity of the decree. He has relied upon the following authorities in support of his above referred submission.

Kudratulla Sarkar & Others AIR 1925 Calcutta 202
Vs. Upendrakumar Chowdhury

K. Buchilingam Vs. AIR 1922 Madras 186
K. Satyanarayanmurti & others

Abdul Rasidkhan Vs. S.K. AIR 1979 Orissa 175
Rahimtulla & others.

He has submitted that the executing Court has rightly held that it cannot go behind the decree and award and, therefore, the application for attachment of immoveable properties of the petitioner given by present opponents No. 1 to 4 was granted by the impugned order.

Upon perusal of the paper book and relevant

record produced before the Court by the learned advocates, I do not find any infirmity or illegality in the impugned order.

Submission made by learned advocate Mr Bukhari that the award is without jurisdiction and, therefore, it is a nullity does not appear to be proper for the reason that after making necessary inquiry, the Tribunal had passed the award whereby the petitioner was saddled with a liability as an owner. It appears that while passing the award, the Tribunal must have considered contents of the claim petition and complaint filed against the petitioner which is on record. Even in the claim petition, the petitioner was alleged to be the owner of the vehicle in question. As the above referred facts placed before the Tribunal were not controverted by the petitioner, the Tribunal must have come to a conclusion that the petitioner was the owner. As per provisions of Section 168 of the Motor Vehicles Act, the Tribunal has to hold an inquiry into the claim. It is very clear that after making necessary inquiry, the Tribunal has passed the award. It is pertinent to note here that the petitioner was served with summons but for the reasons best known to the petitioner, he did not appear before the Tribunal. Now after the award has been declared, it would not be proper on the part of the petitioner to submit before the executing Court that the award was without jurisdiction because, as per submission made by the petitioner, he is not the owner of the vehicle in question but somebody else is owner of the vehicle in question. He has submitted that name of his father was stated as an owner in the insurance policy and, therefore, according to learned advocate Mr Bukhari, father of the petitioner ought to have been saddled with a liability to pay compensation as an owner.

The above referred submissions made by Mr Bukhari could have been made before the Tribunal but, as stated hereinabove, for the reasons best known to the petitioner he did not appear before the Tribunal and ultimately the Tribunal passed the award. It is also pertinent to note here that the petitioner did not think it necessary to challenge the award by filing an appeal. Thus, it appears that the award has become final.

Looking to the above referred circumstances, I do not think that there is any substance in this revision application. It cannot be said that the Tribunal had no jurisdiction to decide the claim. If the Tribunal had committed any error in passing an award against the petitioner, the petitioner ought to have challenged

validity of the award by filing an appeal but the petitioner did not do so and he has challenged the award in the execution proceedings.

For the aforesaid reasons, I do not find any substance in this revision application and, therefore, the revision application is rejected. Rule is discharged.

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